

TAS Process for CWA §319 (h) Funding

Jennifer Wintersteen
EPA Project Officer
Helena, Montana

What does TAS mean?

- ❑ Treatment in a manner similar to a State
- ❑ Clean Water Act requires Tribes to meet certain criteria in order to be authorized to administer water quality programs.

Why does TAS do for the Tribe?

- ❑ Tribes become **eligible** to compete for and administer funding available under Section 319 of the Clean Water Act.
- ❑ Some Tribal CWA 319 funds are competitive and some are offered to Tribes by formula.

Requirements

- ☒ Clean Water Act § 518(e)
- ☒ Clean Water Act § 319 (a) and (b)
- ☒ 40 CFR § 130.6(d)
- ☒ 40 CFR § 35.638

Section 518(e)


Clean Water Act Section 518 (e) authorizes Tribal programs. Treatment as a state is found in this section.

CWA Section 518 (e)

(e) Treatment as States
The Administrator is authorized to treat an Indian tribe as a State for purposes of subchapter II of this chapter and sections...of this title to the degree necessary to carry out the objectives of this section, **but only if--**

CWA Requirements


(1) the Indian tribe is **recognized** by the Department of the Interior and eligible for funding and services from the BIA by virtue of their status as Indian tribes.



Recognition



560+ tribal entities recognized and eligible for funding and services from the BIA.

Federal Register Vol. 70, Number 71194 (www.gpo.gov) Nov. 25, 2005



CWA Requirements

(2) the Indian tribe has a governing body carrying out substantial **governmental duties and powers**; and



Duties and Powers

- ❏ Federal government contracts with Tribe for the performance of services with the Council. DOI, HUD, USDA, etc.
- ❏ Agencies/Committees to help administer grant and run environmental program.
- ❏ Constitution under which the Council operates, as approved by Sec. of Interior, delegates general governmental powers to the Council. By laws approved by BIA.

CWA Requirements


- ❏ (3) the functions to be exercised by the Indian tribe pertain to the **management and protection of water resources** which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise **within the borders of an Indian reservation**; and

Authority

- ❏ A description of the area and water resources over which the Tribe asserts **authority**. Include Maps and legal descriptions.
- ❏ A written statement from the tribal attorney stating the Tribe's basis for legal authority.


CWA Requirements

- (4) the Indian tribe is reasonably expected to be **capable**, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and of all applicable regulations.




Demonstrate Capability

- CWA 106 program
- Position Description for NPS coordinator
 - Qualifications, duties, knowledge, skills, and abilities for job
- Other Environmental program work
- NPS Assessment and Management Plan



40 CFR Part 35.638 Requirements

- NPS Assessment Report
 - Inventory of Reservation Waters
 - Maps
 - Monitoring of Tribal Surface and Ground Waters
 - Criteria used to determine Impairment
 - NPS priority list or Assessment Report generated (usually by CWA 106 program)



40 CFR Requirements

- Management Plan
 - Schedule with milestones
 - Best Management Practices (BMPs)
 - Partnerships and Cooperating entities
 - Resources to implement BMPs
 - Education, training, demonstration projects
 - Prioritize projects



Previous Determinations made in earlier TAS or eligibility approvals

- "TAS simplification" rule
 - Preamble to the 1994 amendments to the 40 CFR Parts 35 and 130 rule.
- Once the Agency makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs *unless a subsequent application raises different legal issues* (emphasis added) (59 Fed. Reg. 13814, at 13816)

Previous CWA 106 TAS

- Can support §319 TAS
- The requirement pertaining to tribal capability, however, needs to be met every time and EPA cannot rely solely on the Agency's capability determination in a previous TAS or eligibility approval.

Summary



- Tribe must attain a certain level of knowledge of their Reservation waters and produce an Assessment Report and Management Plan.

Summary

- Tribe must meet the 4 eligibility requirement. The first three can be *supported* by CWA Section 106 TAS approval. Update any changes since last TAS!
- EPA's Regional Counsel and Program Offices work with the Tribe to complete the TAS process.

Success!

- 14 Tribes in Region 8 have completed the CWA 319 TAS process and are eligible to receive and compete for funding.



Join the Team!

Assiniboine & Sioux Tribes/Fort Peck
Blackfeet
Cheyenne River Sioux
Chippewa-Cree Tribe/Rocky Boy's
Confederated Salish & Kootenai/Flathead
Crow Tribe
Flandreau Santee Sioux
Gros Ventre and Assiniboine/Fort Belknap
Lower Brule Sioux Tribe
Northern Cheyenne Tribe
Southern Ute Indian Tribe
Spirit Lake Nation/Fort Totten
Turtle Mountain Band of Chippewas
Ute Mountain Ute Tribe